

Internal Revenue Service, Treasury

§ 301.7701(b)-0

agreement between employee representatives and one or more employers.

(c) Even if (1) the finding in the example in the preceding paragraph (b) is made by the Secretary of Labor, (2) the union has been recognized as exempt under section 501(c)(5), and (3) the percentage condition in section 7701(a)(46) is satisfied, the Internal Revenue Service has the authority, pursuant to section 7701(a)(46), to determine whether there is a collective bargaining agreement under the Code.

[T.D. 8073, 51 FR 4337, Feb. 4, 1986]

§ 301.7701(b)-0 Outline of regulation provision for section 7701(b)-1 through (b)-9.

This section lists the paragraphs contained in §§ 301.7701(b)-1 through 301.7701(b)-9.

§ 301.7701(b)-1 Resident alien.

- (a) Scope.
- (b) Lawful permanent resident.
 - (1) Green card test.
 - (2) Rescission of resident status.
 - (3) Administrative or judicial determination of abandonment of resident status.
- (c) Substantial presence test.
 - (1) In general.
 - (2) Determination of presence.
 - (i) Physical presence.
 - (ii) United States.
 - (3) Current year.
 - (4) Thirty-one day minimum.
- (d) Application of section 7701(b) to the possessions and territories.
 - (1) Application to aliens.
 - (2) Non-application to citizens.
- (e) Examples.

§ 301.7701(b)-2 Closer connection exception.

- (a) In general.
- (b) Foreign country.
- (c) Tax home.
 - (1) Definition.
 - (2) Duration and nature of tax home.
- (d) Closer connection to a foreign country.
 - (1) In general.
 - (2) Permanent home.
- (e) Special rule.
- (f) Closer connection exception unavailable.
- (g) Filing requirements.

§ 301.7701(b)-3 Days of presence in the United States that are excluded for purposes of section 7701(b).

- (a) In general.
- (b) Exempt individuals.
 - (1) In general.
 - (2) Foreign government-related individual.

- (i) In general.
- (ii) Definition of international organization.
- (iii) Full-time diplomatic or consular status.
- (3) Teacher or trainee.
- (4) Student.
- (5) Professional athlete.
- (6) Substantial compliance.
- (7) Limitation on teacher or trainee and student exemptions.
 - (i) Teacher or trainee limitation in general.
 - (ii) Special teacher or trainee limitation for section 872(b)(3) compensation.
 - (iii) Limitation on student exemption.
 - (iv) Transition rule.
 - (v) Examples.
 - (8) Immediate family.
- (c) Medical condition.
 - (1) In general.
 - (2) Intent to leave the United States.
 - (3) Preexisting medical condition.
 - (4) Examples.
- (d) Days in transit.
- (e) Regular commuters from Mexico or Canada.
 - (1) General rule.
 - (2) Definitions.
 - (3) Examples.
- (f) Determination of excluded days applies beyond year of determination.

§ 301.7701(b)-4 Residency time periods.

- (a) First year of residency.
- (b) Last year of residency.
 - (1) General rule.
 - (2) Exceptions.
- (c) Rules relating to residency starting date and residency termination date.
 - (1) De minimis presence.
 - (2) Proration.
 - (3) Residency starting date for certain individuals.
 - (i) In general.
 - (ii) Determination of presence.
 - (iii) Thirty-one day period.
 - (iv) Period of continuous presence.
 - (v) Election procedure.
 - (A) Filing requirements.
 - (B) Election on behalf of a dependent child.
 - (C) Statement.
 - (vi) Penalty for failure to comply with filing requirements.
 - (A) General rule.
 - (B) Exception.
- (d) Examples.
- (e) No lapse.
 - (1) Residency in prior year.
 - (2) Residency in following year.
 - (3) Special rule.
 - (4) Example.

§ 301.7701(b)-5 Coordination with section 877.

- (a) General rule.
- (b) Tax imposed.

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(c) Example.

§ 301.7701(b)-6 Taxable year.

- (a) In general.
- (b) Examples.

§ 301.7701(b)-7 Coordination with income tax treaties.

- (a) Consistency requirement.
 - (1) Application.
 - (2) Computation of tax liability.
 - (3) Other Internal Revenue Code purposes.
 - (4) Special rules for S corporations. [Reserved]
- (b) Filing requirements.
- (c) Contents of statement.
 - (1) In general.
 - (i) Returns due after December 15, 1997.
 - (ii) Earlier returns.
 - (2) Controlled foreign corporation shareholders.
 - (3) S corporation shareholders. [Reserved]
 - (d) Relationship to section 6114(a) treaty-based return positions.
- (e) Examples.

§ 301.7701(b)-8 Procedural rules.

- (a) Who must file.
 - (1) Closer connection exception.
 - (2) Exempt individuals and individuals with a medical condition.
 - (3) De minimis presence and residency starting and termination dates.
- (b) Contents of statement.
 - (1) Closer connection exception.
 - (i) Returns due after December 15, 1997.
 - (ii) Earlier returns.
 - (2) Exempt individuals and individuals with a medical condition.
 - (i) Returns due after December 15, 1997.
 - (ii) Earlier returns.
 - (3) De minimis presence and residency starting and termination dates.
- (c) How to file.
- (d) Penalty for failure to file statement.
 - (1) General rule.
 - (2) Exception.
- (e) Filing requirement disregarded.

§ 301.7701(b)-9 Effective dates of §§ 301.7701(b)-1 through 301.7701(b)-7.

- (a) In general.
- (b) Special rules.
 - (1) Green card test-residency starting date.
 - (2) Substantial presence test-years included.
 - (3) Professional athletes.
 - (4) Procedural rules and filing requirements.

[T.D. 8411, 57 FR 15241, Apr. 27, 1992; 58 FR 17516, Apr. 5, 1993; as amended by T.D. 8733, 62 FR 53386, Oct. 14, 1997]

§ 301.7701(b)-1 Resident alien.

(a) *Scope.* Section 301.7701(b)-1(b) provides rules for determining whether an alien individual is a lawful permanent resident of the United States. Section 301.7701(b)-1(c) provides rules for determining if an alien individual satisfies the substantial presence test. Section 301.7701(b)-2 provides rules for determining when an alien individual will be considered to maintain a tax home in a foreign country and to have a closer connection to that foreign country. Section 301.7701(b)-3 provides rules for determining if an individual is an exempt individual because of his or her status as a foreign government-related individual, teacher, trainee, student, or professional athlete. Section 301.7701(b)-3 also provides rules for determining whether an individual may exclude days of presence in the United States because the individual was unable to leave the United States because of a medical condition. Section 301.7701(b)-4 provides rules for determining an individual's residency starting and termination dates. Section 301.7701(b)-5 provides rules for applying section 877 to a nonresident alien individual. Section 301.7701(b)-6 provides rules for determining the taxable year of an alien. Section 301.7701(b)-7 provides rules for determining the effect of these regulations on rules in tax conventions to which the United States is a party. Section 301.7701(b)-8 provides procedural rules for establishing that an individual is a nonresident alien. Section 301.7701(b)-9 provides the effective dates of section 7701(b) and the regulations under that section. Unless the context indicates otherwise, the regulations under §§ 301.7701(b)-1 through 301.7701(b)-9 apply for purposes of determining whether a United States citizen is also a resident of the United States. (This determination may be relevant, for example, to the application of section 861(a)(1) which treats income from interest-bearing obligations of residents as income from sources within the United States.) The regulations do not apply and §§ 1.871-2 and 1.871-5 of this chapter continue to apply for purposes of the bona fide residence test of section 911. See § 1.911-2(c)